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Presentations"

APPEAL BRIEF

To: Commissioner for Patents
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Pursuant to 37 C.F.R. §41.37, Applicant hereby submits an appeal brief for application 09/465,529, filed December 16, 1999, within the requisite time from the date of filing the Notice of Appeal. Accordingly, Applicant appeals to the Board of Patent Appeals and Interferences seeking review of the Examiner's rejections.

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(1) Real Party in Interest

The real party in interest is Microsoft Corporation, the assignee of all right, title and interest in and to the subject invention.

(2) Related Appeals and Interferences

Appellant is not aware of any other appeals, interferences, or judicial proceedings which will directly affect, be directly affected by, or otherwise have a bearing on the Board's decision to this pending appeal.

(3) Status of Claims

Claims 1-3, 5-13, 15-37 and 39-57 stand rejected and are pending in the Application. The claims are set forth in the Appendix of Appealed Claims on page 30.

(4) Status of Amendments

A final Office Action was issued on February 21, 2006. Claims 1, 11, 20, 25, 34, 41, 44, 52 and 55 were amended responsive thereto in an RCE dated March, 10, 2006.

A subsequent non-final Office Action was issued June 9, 2006 from which this appeal is taken.

(5) Summary of Claimed Subject Matter

A concise explanation of each of the independent claims is included in this Summary section, including specific reference characters, if any. These specific

reference characters are examples of particular elements of the drawings for certain embodiments of the claimed subject matter and the claims are not limited to solely the elements corresponding to these reference characters.

With regard to claim 1, a viewing management method for managing viewing of multiple live electronic presentations comprises: simultaneously monitoring (page 10, lines 3-16) two or more electronic presentations that are concurrently broadcast, wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer; and automatically switching (page 10, lines 19-22) back and forth (page 10, lines 3-16; page 18, lines 5-15) between displays of the two or more electronic presentations based upon viewer-defined preferences, wherein the viewer-defined preferences are defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself.

With regard to claim 11, a viewing management method for managing viewing of multiple live electronic presentations comprises: simultaneously monitoring (page 10, lines 3-16) two or more electronic presentations that are concurrently broadcast, wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer (page 21, lines 1-13); and automatically notifying (page 10, line 19 – page 11, line 6) a viewer when one or more of the electronic presentations satisfies a viewer-defined preference, wherein viewer-defined preferences can be defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself

and wherein an activity or action can pertain to a character or person in at least one of said two or more electronic presentations (page 18, line 16 – page 19, line 17).

With regard to claim 20, one or more programmable computers having instructions which, when executed by the one or more computers implement a viewing management method for managing viewing of multiple live electronic presentations comprising: sending at least one viewer request to an encoder (page 8, lines 17-25), the viewer request containing one or more viewer-defined preferences that relate to one or more events that can occur in one or more electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said one or more electronic presentations (page 18, line 16 – page 19, line 17); evaluating (page 8, lines 17 – page 9, line 11), with the encoder, one or more electronic presentations that are being broadcast to determine whether any of the viewer-defined preferences are satisfied, wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer; and if a viewer-defined preference is satisfied by one or more of the electronic presentations, notifying (page 10, line 19 – page 11, line 6) a viewer that is associated with the viewer-defined preference that was satisfied.

With regard to claim 25, a viewing management method for managing viewing of multiple live electronic presentations comprises: receiving one or more viewer requests from one or more viewers (page 8, lines 17-25), the viewer requests containing viewer-defined preferences that are to be used to evaluate a plurality of different live electronic presentations; evaluating (page 8, line 17 –

page 9, line 11) a plurality of live electronic presentations using the viewer-defined preferences, wherein the viewer-defined preferences are defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer, and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations; and in the event that one or more of the viewer-defined preferences is satisfied, notifying (page 10, line 19 – page 11, line 6) at least one viewer that is associated with the viewer-defined preference that is satisfied.

With regard to claim 34, a viewing management method for managing viewing of multiple live electronic presentations comprises: creating (page 8, lines 17-25) a viewer request that contains one or more viewer-defined preferences for use in evaluating one or more live electronic presentations; sending the viewer request to one or more computing devices (page 8, lines 17-25); and evaluating (page 8, line 17 – page 9, line 11) one or more electronic presentations with the one or more computing devices in light of the one or more viewer-defined preferences, wherein the viewer-defined preferences can be defined in terms of events that can occur in electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer and wherein an

activity or action can pertain to a character or person in at least one of said electronic presentations.

With regard to claim 41, an interactive network comprises: one or more client viewing devices; and one or more computing devices communicatively linked with the one or more client viewing devices, the computing devices being programmed to: simultaneously monitor (page 10, lines 3-16) one or more electronic presentations that are concurrently broadcast by at least monitoring data that does not comprise content that can be presented to a viewer; and automatically send a notification (page 10, line 19 – page 11, line 6) to one or more of the client viewing devices when one or more of the electronic presentations satisfies one or more viewer-defined preference that is defined by a viewer of the one or more client viewing devices, wherein the viewer-defined preferences are defined in terms of events that can occur in electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations.

With regard to claim 44, a viewing management method for managing viewing of multiple live electronic presentations comprises: monitoring viewing habits of one or more viewers (page 27, lines 12-14) of live electronic presentations to determine particular events within the electronic presentations that the viewers are likely to want to view, wherein at least some of said events pertain to some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at

least one of said electronic presentations; ascertaining (page 27, lines 24-25) from data that does not comprise content that can be presented to a viewer, whether said one or more viewers would likely want to view a particular event; and notifying (page 10, line 19 – page 11, line 6) one or more viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view.

With regard to claim 52, an interactive network comprises: one or more client viewing devices; and one or more computing devices communicatively linked with the one or more client viewing devices, the computing devices being programmed to: monitor viewing habits of one or more viewers (page 27, lines 12-14) of live electronic presentations to determine particular events within the electronic presentations that the viewers are likely to want to view, wherein at least some of said events pertain to some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations; ascertain (page 27, lines 24-25) from data that does not comprise content that can be presented to a viewer, whether said one or more viewers would likely want to view a particular event; and notify (page 10, line 19 – page 11, line 6) one or more viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view.

With regard to claim 55, a user interface (page 22, line 7 – page 25, line 19) for use in an interactive entertainment system comprises: a processor; an application executing on the processor and configured to present plurality of fields, one of which displaying a number of titles of programs that can be selected

by a viewer, another of which displaying indicia that can be selected to define viewer preferences for simultaneously monitoring two or more of the programs that are selected by the viewer, wherein said monitoring comprises monitoring at least data that does not comprise content that can be presented to the viewer and which comprises events that can occur within said two or more programs, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations; and an input device operable to enable a user to select a particular electronic presentation for continuous play viewing.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1-10 stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,177,931 to Alexander et al. (hereinafter "Alexander") in view of U.S. Patent No. 6,088,722 to Herz et al. (hereinafter "Herz").

Claims 11-13, 15-37 and 39-57 stand rejected under 35 U.S.C. 103(a) as being obvious over Alexander in view of to Herz and further in view of U.S. Patent No. 6,061,056 to Menard et al. (hereinafter "Menard").

Before discussing the substance of the Office's rejections, the following discussion of Applicant's disclosure as well as the references to Alexander and Herz is provided.

Applicant's Disclosure

Applicant's disclosure describes various viewing management methods and systems for managing viewing of multiple live electronic presentations. In one described embodiment, viewers are given an opportunity to register their preferences for viewing certain *events* that can occur within a plurality of different electronic presentations. The selected electronic presentations are simultaneously monitored, during their broadcast, while a viewer might be watching only one of the electronic presentations. When one or more of the viewer-defined *events* is detected, the viewer is notified that the event is taking place.

Applicant's disclosure instructs, starting on page 8, line 17, that in one embodiment, each viewer is given an opportunity to register with an encoder/server 14 (Fig. 1) for notifications concerning multiple live electronic broadcasts. Registration takes place in the form of a viewer request that is formulated by the viewer and passed on to the encoder/server.

Once the viewer requests are received by the encoder/server 14, it creates entries in a database 18 that it manages. Each of the entries corresponds to a particular viewer's choices. As the sources 16 broadcast their particular presentations, *events are triggered* and sent by the sources to the encoder/server 14. *These triggered events describe some current aspect of the electronic presentation.* For example, if Tiger Woods is getting ready to tee off on the 16th hole, the *event* that might be triggered by the source and sent to the encoder/server 14 might be "Woods tee off on 16th". Once the encoder/server receives the triggered *event*, it conducts a search of the database 18 to identify all of the viewers that have registered for notification. Once the viewers are identified,

individual notifications are sent from the encoder/server 14 to the client viewing devices 12.

Consider now an exemplary database that facilitates searching and notification of viewers. Specifically, Fig. 6 of Applicant's disclosure illustrates entries in an exemplary live content database, such as database 30 (Fig. 4) generally at 210. The live content database 210 maintains current, up-to-the-minute information on electronic presentations that are about to be or are being broadcast by various sources. The live content information that is managed in this database can come from, or be associated with many sources that are monitored by the server 14. In the illustrated example, three fields are provided, i.e. a presentation field 212, a topic field 214, and an events field 216.

The presentation field 212 includes the name or title of the current electronic presentation or program that is being broadcast by a source. In the illustrated example, there are a number of different presentations or programs that are being monitored. As these programs are being broadcast, information is regularly received by the server 14 or encoder. ***This information can describe what is taking place during the broadcast.*** This information is used to continuously update the database so that viewer notifications can be sent in a timely manner.

The topic field 214 identifies the various topics that are currently being presented for the various programs. These topics can, but need not necessarily change during a particular program. In the illustrated example, weather is currently being presented on CNN. Similarly, gorillas are currently being discussed on National Geographic Explorer.

The events field 216 identifies the current *events* that are being presented on the various programs. For example, the Hurricane Buster is the current event within the weather topic on CNN. Similarly, on Monday Night Football, it is currently 2nd down and the Steelers have the ball on their 40 yard line.

The data or information in the topic field 214 and the events field 216 can be generated manually or automatically. Manual generation refers to an individual (e.g., a presentation author) creating the data. For example, the author may write a summary or a list of key words for the presentation and provide them to server 14 (either directly or via an encoder 26).

Automatic generation refers to one of the components, such as an encoder 26 or server 14, using any of a variety of mechanisms to generate data describing the presentation as the presentation occurs.

Notice that the data or information that appears in the topic and events fields 214, 216 does not comprise the *actual content* that can be presented to a viewer. Rather, it comprises data that *describes* content that is currently being broadcast.

The Alexander Reference

Alexander discloses electronic program guide (EPG) methods and systems that enable viewer interaction capabilities with the EPG. It appears that much of the processing that takes place to identify programs of interest for particular viewers concerns the programs' *titles*. These program titles typically comprise content that is presented to the viewer.

For example, under the heading "Watch Scheduling Function" (column 8, starting at line 5), Alexander instructs as follows. In the Watch Scheduling Function, also referred to as the Watch Function, the viewer instructs the EPG what programs to add to the Watch List, which is the *list of programs* and related programming schedule information, for programs that the viewer want to watch. Alexander further instructs in column 9, starting at line 65 that the EPG provides the viewer with the opportunity to select *program titles*, scheduled for delivery at future times, to watch. By *selecting program titles*, the viewer builds a "watch list."

In addition, as the Office notes, Alexander describes developing viewer profile information. See, e.g. column 28, starting at line 12. The viewer profile information is used to customize various aspects of the EPG. For example, in column 30, starting at around line 45, Alexander instructs that viewer profile information can be used to present, via the EPG, the user's favorite channels or to tune the television to a particular channel during a time period when the user typically views that channel. Alexander further goes on to describe how the viewer profile information can be used in connection displaying particular types of advertisements for the user. See, e.g. column 31, lines 9-24.

The Herz Reference

Herz relates to a system and method for making available the video programming and other data most desired by the customer by developing an "agreement matrix" characterizing the attractiveness of each available source of video programming or data to each customer. From the agreement matrix, one or

more "virtual channels" of data, customized to each customer, are determined. At any given time, the one or more virtual channels include the video programming or other data which is predicted to be most desirable to the customer based on the customer's preferences. The virtual channels are determined by selecting from the available alternatives only those video programs or other data which most closely match the customer's objective preferences.

(7) Argument

A. The § 103 rejection of claims 1-3, and 5-10 over the combination of Alexander and Herz should be withdrawn.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fritch*, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992).

A factor cutting against a finding of motivation to combine or modify the prior art is when the prior art *teaches away* from the claimed combination. A reference is said to teach away when a person or ordinary skill, upon reading the reference, would be led in a direction divergent from the path that the applicant took. *In re Gurley*, 31 USPQ 2d 1130, 1131 (Fed. Cir 1994).

The need for specificity pervades this authority. See, e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed").

Claims 1-3, 5-10

Claim 1 recites a viewing management method for managing viewing of multiple live electronic presentations comprising (emphasis added):

- simultaneously monitoring two or more electronic presentations that are concurrently broadcast, wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer; and
- ***automatically switching back and forth between displays of the two or more electronic presentations based upon viewer-defined preferences***, wherein the viewer-defined preferences are defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself.

In making out the rejection of this claim, the Office argues that the combination of Alexander and Herz would render claim 1 obvious. Applicant disagrees and respectfully traverses the rejection made by the Office.

In making out the rejection, the Office argues that Alexander teaches automatically switching back and forth between displays of the two or more electronic presentations, citing to the "Watch Scheduling Function" disclosed by Alexander at column 9, line 64 through column 10, line 29. For the convenience of the Office, this excerpt is reproduced below.

Watch Scheduling.

The EPG provides the viewer with the opportunity to select program titles, scheduled for delivery at future times, to watch. By selecting program titles, the viewer builds a "watch list." Watch list options and instructions provide functionality parallel to the EPG's Record Function. Instead of automatically recording the programs selected, *the Watch Function automatically turns the television on, if it is not already on, and automatically tunes the television to the channel scheduled to deliver the designated program, if the television is not already tuned to that channel.* This feature provides the viewer with the opportunity to watch a program of special interest at the scheduled time even if the viewer has forgotten about the scheduled delivery. This feature will also provide for parental selection of program viewing for children.

The viewer can enter the Watch Scheduling Function in a number of ways. The viewer can enter the Watch Scheduling Function by selecting that Function from the EPG menu. The viewer can also enter the Watch Scheduling Function by highlighting an Ad Window displaying an advertisement for a future-scheduled program or a Virtual Channel Ad Slot displaying an advertisement for a future-scheduled program (both of which are described elsewhere in this application).

The viewer can designate any program on the Watch List as a program that the viewer wants to watch regularly. In one embodiment, if the viewer enters the Watch Scheduling Function by highlighting an Ad Window or Virtual Channel Ad Slot, then if the viewer chooses to designate the program as a "regular" watch, the designation expires after a certain amount of time if the advertiser stops running the advertisement. The planned expiration is an incentive to the advertisers to renew their advertisements.

As should be apparent from the excerpt reproduced above, Alexander does in fact disclose that *the Watch Function automatically turns the television on, if it is not already on, and automatically tunes the television to the channel scheduled to deliver the designated program, if the television is not already tuned to that channel*. However, there is absolutely no mention whatsoever in the excerpt reproduced above of *automatically switching back and forth between displays of the two or more electronic presentations*, as claimed. Perhaps the Office is confused as to what the claimed language, "switching back and forth between displays," actually means. In order to assist the Office in appreciating the ability to switch back and forth between displays, an excerpt from Applicant's specification is reproduced below.

Applicant's Specification, Pages 1-2

In the past, when more than one program of interest was broadcast, a viewer could effectively view portions of both programs by *simply changing the channel back and forth between the programs*. This approach is not ideal for a couple of reasons. First, a viewer must be diligent in switching between the programs. This is particularly true when there are only specific events in the programs that the viewer is interested in viewing. For example, suppose that there is a golf tournament and a football game being broadcast on different channels and that a viewer is interested in viewing aspects of each broadcast. With respect to the golf tournament, the viewer might only wish to view Tiger Woods and John Daly teeing off, Tiger Woods and John Daly on the 18th hole, and all putts and approach shots from Mark Duval. With respect to the football game, the viewer might be particularly interested in third and fourth down plays, and the last two minutes of the first and second halves. *In order to view all of these desired events, the viewer will have to switch back and forth fairly frequently to ensure that they do not miss any of the events*. Second, a viewer may switch channels many times just to check the status of the programs even when an event of interest is not being broadcast. This can detract from the viewer's viewing experience of the programs.

Accordingly, in order to fix the problem of having to manually switch back and forth between two or more electronic presentations that a user desires to watch, such as Tiger Woods playing golf and a football game, claim 1 recites *automatically switching back and forth between displays of the two or more electronic presentations based upon viewer-defined preferences*. In other words, a user may be watching Tiger Woods tee off, and then get automatically switched to a football game, and then back to Tiger Woods teeing off once again. Alexander does not teach or in any way suggest this ability. At most, Alexander teaches automatically switching to a single program. For instance, if a user were watching golf, and a football game came on, Alexander teaches the ability of switching to the football game. However, Alexander does not teach or in any way suggest the ability to then switch back to Tiger Woods. Therefore, Alexander does not teach *automatically switching back and forth between displays of the two or more electronic presentations based upon viewer-defined preferences*.

Accordingly, for at least this reason, the Office has failed to establish a prima facie case of obviousness.

Additionally, the Office then relies on Herz for the notion of monitoring data that does not comprise data that can be presented to the viewer. As a motivation for combining this reference with Alexander, the Office argues that one would be motivated “in order to more precisely match viewers’ preferences through the use of specialized data that provides a high level of granularity.”

Applicant submits that the motivation is misplaced and is not sufficient to support the combination that the Office argues. Specifically, there is nothing in Alexander that indicates that a level of imprecision with regard to matching

preferences which would lend itself to the solution proposed by Herz. Rather, Alexander proposes its scheme and, from the discussion therein, it appears that Alexander is quite content with its solution. Thus, there would not appear to be an articulated need in Alexander which would look for a solution in Herz.

Applicant reminds the Office that just because two references can be combined does not mean that they should absent some motivation from the references themselves or the knowledge of a person of ordinary skill.

Accordingly, for this additional reason, the Office has failed to establish a prima facie case of obviousness and this claim is allowable.

For at least these reasons, this claim is allowable.

Claims 2-3 and 5-10 depend from claim 1 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 1, are neither shown nor suggested by Alexander and Herz, either singly or in combination with each other.

B. The § 103 rejection of claims 11-13, 15-37 and 39-57 should be withdrawn.

Claims 11-13, 15-37 and 39-57

Claim 11 recites a viewing management method for managing viewing of multiple live electronic presentations comprising (emphasis added):

- simultaneously monitoring two or more electronic presentations that are concurrently broadcast, wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer; and
- automatically notifying a viewer when one or more of the electronic presentations satisfies a viewer-defined preference, wherein viewer-

defined preferences can be defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and *wherein an activity or action can pertain to a character or person* in at least one of said two or more electronic presentations.

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render claim 11 obvious. Applicant disagrees and respectfully traverses the rejection made by the Office.

Preliminarily, Applicant notes that in making out the rejection of this and some of the other claims, the Office argues features which are simply not present. Applicant believes this to be an oversight.

In making out the rejection, the Office admits that neither Alexander nor Herz teaches or in any way suggests that *an activity or action can pertain to a character or person* in at least one of said two or more electronic presentations. Applicant agrees. However, the Office relies on Menard for this feature and argues that it would have been obvious to combine Alexander, Herz and Menard for the purpose of allowing regulated or government organizations to monitor television programs for negative or positive views on their organizations. Applicant disagrees with this motivation given by the Office.

The motivation given by the Office, comes directly from Menard which teaches that "regulated or government organizations can use this invention to monitor television programs for negative (or positive) view on their organizations." (Menard, Column 3, 6-8). Both Alexander and Herz propose different viewing/recording methods for television viewers and neither disclose or suggest any foundation for making the modification that is proposed by the Office.

Specifically, neither Alexander nor Herz mention that their approaches can be used by regulated or government organizations to monitor television programs. In fact, neither reference mentions anything about organizational use. Therefore, there is no reason that one with skill in the art would find it obvious to modify Alexander or Herz so that government organizations could monitor television program for negative or positive views on their organizations. The context of Menard simply makes no sense in connection with Alexander and Herz. Accordingly, what the Office has done is to add a third reference which teaches a specific feature, and then argue that it would be obvious to combine two references with the third reference in order to do something which the third reference already does, without any regard for the context of the first two references. As such, the Office's motivation could be used to make a combination of any two references by simply arguing that the combination would be motivated by something mentioned in one of the references which has no contextual foundation in the second reference. Applicant believes that this kind of bootstrap argument is simply a dressed up form of hindsight reconstruction which, as the Office appreciates, has been proscribed by the Federal Circuit.

For at least this reason, the Office has failed to provide a proper motivation for why one with skill in the art would have found it obvious to combine Alexander, Herz, and Menard. As such, the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 12-13 and 15-19 depend from claim 11 and are allowable as depending from an allowable base claim. These claims are also allowable for their

own recited features which, in combination with those recited in claim 11, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 20 recites one or more programmable computers having instructions which, when executed by the one or more computers implement a viewing management method for managing viewing of multiple live electronic presentations comprising (emphasis added):

- sending at least one viewer request to an encoder, the viewer request containing one or more viewer-defined preferences that relate to one or more events that can occur in one or more electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and ***wherein an activity or action can pertain to a character or person in at least one of said one or more electronic presentations;***
- evaluating, with the encoder, one or more electronic presentations that are being broadcast to determine whether any of the viewer-defined preferences are satisfied, wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer; and
- if a viewer-defined preference is satisfied by one or more of the electronic presentations, notifying a viewer that is associated with the viewer-defined preference that was satisfied.

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by the Office in making out the rejection of claim 11. Accordingly, for the same reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

Specifically, the Office has failed to provide a proper motivation for why one with skill in the art would have found it obvious to combine Alexander, Herz, and Menard.

For at least this reason, this claim is allowable.

Claims 21-24 depend from claim 20 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 20, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 25 recites a viewing management method for managing viewing of multiple live electronic presentations, comprising (emphasis added):

- receiving one or more viewer requests from one or more viewers, the viewer requests containing viewer-defined preferences that are to be used to evaluate a plurality of different live electronic presentations;
- evaluating a plurality of live electronic presentations using the viewer-defined preferences, wherein the viewer-defined preferences are defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer, and *wherein an activity or action can pertain to a character or person in at least one of said electronic presentations*; and
- in the event that one or more of the viewer-defined preferences is satisfied, notifying at least one viewer that is associated with the viewer-defined preference that is satisfied.

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by

the Office in making out the rejection of claim 11. Accordingly, for the same reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 26-33 depend from claim 25 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 25, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 34 recites a viewing management method for managing viewing of multiple live electronic presentations comprising (emphasis added):

- creating a viewer request that contains one or more viewer-defined preferences for use in evaluating one or more live electronic presentations;
- sending the viewer request to one or more computing devices; and
- evaluating one or more electronic presentations with the one or more computing devices in light of the one or more viewer-defined preferences, wherein the viewer-defined preferences can be defined in terms of events that can occur in electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer and *wherein an activity or action can pertain to a character or person in at least one of said electronic presentations.*

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by

the Office in making out the rejection of claim 11. Accordingly, for the same reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 35-37 and 39-40 depend from claim 34 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 34, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 41 recites an interactive network comprising (emphasis added):

- one or more client viewing devices; and
- one or more computing devices communicatively linked with the one or more client viewing devices, the computing devices being programmed to:
 - simultaneously monitor one or more electronic presentations that are concurrently broadcast by at least monitoring data that does not comprise content that can be presented to a viewer; and
 - automatically send a notification to one or more of the client viewing devices when one or more of the electronic presentations satisfies one or more viewer-defined preference that is defined by a viewer of the one or more client viewing devices, wherein the viewer-defined preferences are defined in terms of events that can occur in electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and *wherein an activity or action can pertain to a character or person in at least one of said electronic presentations.*

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by

the Office in making out the rejection of claim 11. Accordingly, for the same reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 42-43 depend from claim 41 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 41, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 44 recites a viewing management method for managing viewing of multiple live electronic presentations comprising (emphasis added):

- monitoring viewing habits of one or more viewers of live electronic presentations to determine particular events within the electronic presentations that the viewers are likely to want to view, wherein at least some of said events pertain to some activity or action that can take place within the electronic presentation itself and *wherein an activity or action can pertain to a character or person in at least one of said electronic presentations;*
- ascertaining from data that does not comprise content that can be presented to a viewer, whether said one or more viewers would likely want to view a particular event; and
- notifying one or more viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view.

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by the Office in making out the rejection of claim 11. Accordingly, for the same

reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 45-51 depend from claim 44 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 44, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 52 recites an interactive network comprising (emphasis added):

- one or more client viewing devices; and
- one or more computing devices communicatively linked with the one or more client viewing devices, the computing devices being programmed to:
 - monitor viewing habits of one or more viewers of live electronic presentations to determine particular events within the electronic presentations that the viewers are likely to want to view, wherein at least some of said events pertain to some activity or action that can take place within the electronic presentation itself and *wherein an activity or action can pertain to a character or person in at least one of said electronic presentations;*
 - ascertain from data that does not comprise content that can be presented to a viewer, whether said one or more viewers would likely want to view a particular event; and
 - notify one or more viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view.

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by the Office in making out the rejection of claim 11. Accordingly, for the same

reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 53-54 depend from claim 52 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 52, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Claim 55 recites a user interface for use in an interactive entertainment system comprising (emphasis added):

- a processor;
- an application executing on the processor and configured to present plurality of fields, one of which displaying a number of titles of programs that can be selected by a viewer, another of which displaying indicia that can be selected to define viewer preferences for simultaneously monitoring two or more of the programs that are selected by the viewer, wherein said monitoring comprises monitoring at least data that does not comprise content that can be presented to the viewer and which comprises events that can occur within said two or more programs, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and *wherein an activity or action can pertain to a character or person in at least one of said electronic presentations; and*
- an input device operable to enable a user to select a particular electronic presentation for continuous play viewing.

In making out the rejection of this claim, the Office argues that the combination of Alexander with Herz and Menard would render this claim obvious. In making out the rejection, the Office uses the same argument that was used by the Office in making out the rejection of claim 11. Accordingly, for the same

reasons as discussed with regards to claim 11 above, Applicant submits that the Office has failed to make out a *prima facie* case of obviousness.

For at least this reason, this claim is allowable.

Claims 56-57 depend from claim 55 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 55, are neither shown nor suggested by Alexander, Herz and Menard, either singly or in combination with each other.

Conclusion

The Office has not established a *prima facie* case of obviousness. Accordingly, Applicant respectfully requests that the rejections be overturned and that the pending claims be allowed to issue.

Respectfully Submitted,

Dated: 10/16/06

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(8) Appendix of Appealed Claims

1. (Previously Presented) A viewing management method for managing viewing of multiple live electronic presentations, comprising:

simultaneously monitoring two or more electronic presentations that are concurrently broadcast, wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer; and

automatically switching back and forth between displays of the two or more electronic presentations based upon viewer-defined preferences, wherein the viewer-defined preferences are defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself.

2. (Original) The viewing management method of claim 1, wherein the viewer-defined preferences are defined in terms of specific electronic presentation titles.

3. (Original) The viewing management method of claim 1, wherein the viewer-defined preferences are defined in terms of topics that can occur within electronic presentations.

4. (Canceled)

5. (Original) The viewing management method of claim 1, wherein the viewer defined preferences are defined in terms of at least one of:

specific electronic presentation titles;
topics that can occur within electronic presentations; and
events that can occur within electronic presentations.

6. (Original) The viewing management method of claim 1, wherein the viewer-defined preferences are defined in terms of priorities that can be assigned to the two or more electronic presentations.

7. (Original) The viewing management method of claim 1, wherein the viewer-defined preferences are defined in terms of priorities that can be assigned to events that can occur within the two or more electronic presentations.

8. (Original) The viewing management method of claim 1, wherein said automatically switching comprises enabling a picture-in-picture (PIP) display for the viewer in which at least two of the electronic presentations are contemporaneously displayed for the viewer.

9. (Original) One or more computers programmed with instructions which, when executed by the one or more computers, cause the one or more computers to perform the method of claim 1.

10. (Original) One or more computer-readable media having computer-readable instructions thereon which, when executed by a computer, implement the method of claim 1.

11. (Previously Presented) A viewing management method for managing viewing of multiple live electronic presentations, comprising:

simultaneously monitoring two or more electronic presentations that are concurrently broadcast, wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer; and

automatically notifying a viewer when one or more of the electronic presentations satisfies a viewer-defined preference, wherein viewer-defined preferences can be defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said two or more electronic presentations.

12. (Original) The viewing method of claim 11, wherein the viewer-defined preferences are defined in terms of specific electronic presentation titles.

13. (Original) The viewing method of claim 11, wherein the viewer-defined preferences are defined in terms of topics that can occur within electronic presentations.

14. (Canceled)

15. (Original) The viewing method of claim 11, wherein the viewer-defined preferences are defined in terms of at least one of:

specific electronic presentation titles;

topics that can occur within electronic presentations; and

events that can occur within electronic presentations.

16. (Original) The viewing method of claim 11, wherein the viewer-defined preferences are defined in terms of priorities that can be assigned to the two or more electronic presentations.

17. (Original) The viewing method of claim 11, wherein the viewer-defined preferences are defined in terms of priorities that can be assigned to events that can occur within the two or more electronic presentations.

18. (Original) The viewing method of claim 11, wherein said automatically notifying comprises enabling a picture-in-picture (PIP) display for the viewer in which at least two of the electronic presentations are contemporaneously displayed for the viewer.

19. (Original) One or more computers programmed with instructions which, when executed by the one or more computers, cause the one or more computers to perform the method of claim 11.

20. (Previously Presented) One or more programmable computers having instructions which, when executed by the one or more computers implement a viewing management method for managing viewing of multiple live electronic presentations comprising:

sending at least one viewer request to an encoder, the viewer request containing one or more viewer-defined preferences that relate to one or more events that can occur in one or more electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said one or more electronic presentations;

evaluating, with the encoder, one or more electronic presentations that are being broadcast to determine whether any of the viewer-defined preferences are satisfied, wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer; and

if a viewer-defined preference is satisfied by one or more of the electronic presentations, notifying a viewer that is associated with the viewer-defined preference that was satisfied.

21. (Original) The one or more programmable computers of claim 20, wherein said notifying comprises automatically displaying the electronic presentation that satisfied the viewer-defined preference.

22. (Original) The one or more programmable computers of claim 20, wherein said notifying comprises displaying indicia for the viewer that is associated with the viewer-defined preference that was satisfied.

23. (Original) The one or more programmable computers of claim 20, wherein said viewing management method further comprises prior to said sending:
receiving viewer requests with a server, the viewer requests originating from a plurality of different viewers; and
maintaining at least a list of viewers and their viewer-defined preferences in the server,
said sending comprising sending the viewer requests from the server to the encoder.

24. (Original) The one or more programmable computers of claim 23, wherein said notifying comprises:
sending a notification from the encoder to the server;
receiving the notification sent from the encoder; and
sending a notification from the server to the viewer.

25. (Previously Presented) A viewing management method for managing viewing of multiple live electronic presentations, comprising:
receiving one or more viewer requests from one or more viewers, the viewer requests containing viewer-defined preferences that are to be used to evaluate a plurality of different live electronic presentations;

evaluating a plurality of live electronic presentations using the viewer-defined preferences, wherein the viewer-defined preferences are defined in terms of events that can occur within electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer, and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations; and

in the event that one or more of the viewer-defined preferences is satisfied, notifying at least one viewer that is associated with the viewer-defined preference that is satisfied.

26. (Original) The viewing management method of claim 25, wherein said notifying comprises automatically displaying the electronic presentation that is associated with the viewer-defined preference that is satisfied.

27. (Original) The viewing management method of claim 25, wherein said notifying comprises displaying indicia of the electronic presentation that is associated with the viewer-defined preference that is satisfied.

28. (Original) The viewing management method of claim 25, wherein said notifying comprises enabling a picture-in-picture (PIP) display for a viewer in which at least two electronic presentations are contemporaneously displayed for

the viewer, one of the electronic presentations comprising one which is associated with the viewer-defined preference that is satisfied.

29. (Original) The viewing management method of claim 25, wherein said receiving is performed by a server that is programmed to receive the viewer requests and notify the viewers.

30. (Original) The viewing management method of claim 25, wherein said receiving is performed by a server that is programmed to receive the viewer requests, evaluate the live electronic presentations, and notify the viewers.

31. (Original) The viewing management method of claim 25, wherein said evaluating comprises:

receiving information describing the electronic presentations as they are being broadcast;

receiving updated information describing the electronic presentations as they are being broadcast; and

evaluating all of the information that is received in light of the viewer-defined preferences.

32. (Original) One or more computers programmed with instructions which, when executed by the one or more computers, cause the one or more computers to implement the method of claim 25.

33. (Original) One or more computer-readable media having computer-readable instructions thereon which, when executed by a computer, implement the method of claim 25.

34. (Previously Presented) A viewing management method for managing viewing of multiple live electronic presentations, comprising:
creating a viewer request that contains one or more viewer-defined preferences for use in evaluating one or more live electronic presentations;
sending the viewer request to one or more computing devices; and
evaluating one or more electronic presentations with the one or more computing devices in light of the one or more viewer-defined preferences, wherein the viewer-defined preferences can be defined in terms of events that can occur in electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein said evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations.

35. (Original) The viewing management method of claim 34 further comprising using the one or more computing devices to send a notification to a viewer in the event that one or more of the electronic presentations satisfies one or more of the viewer-defined preferences.

36. (Original) The viewing management method of claim 34 further comprising automatically displaying an electronic presentation for a viewer in the event that the electronic presentation satisfies one or more of the viewer-defined preferences.

37. (Original) The viewing management method of claim 34, wherein the viewer-defined preferences are defined in terms of specific electronic presentation titles.

38. (Canceled)

39. (Original) The viewing management method of claim 34, wherein the viewer-defined preferences are defined in terms of topics that can occur in electronic presentations.

40. (Original) One or more computer-readable media having computer-readable instructions thereon which, when executed by a computer, implement the method of claim 34.

41. (Previously Presented) An interactive network comprising:
one or more client viewing devices; and
one or more computing devices communicatively linked with the one or more client viewing devices, the computing devices being programmed to:

simultaneously monitor one or more electronic presentations that are concurrently broadcast by at least monitoring data that does not comprise content that can be presented to a viewer; and

automatically send a notification to one or more of the client viewing devices when one or more of the electronic presentations satisfies one or more viewer-defined preference that is defined by a viewer of the one or more client viewing devices, wherein the viewer-defined preferences are defined in terms of events that can occur in electronic presentations, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations.

42. (Original) The interactive network of claim 41, wherein the one or more client viewing devices are programmed to automatically display at least an indicia of an electronic presentation that satisfies one or more of the viewer-defined preferences upon receiving a notification from the one or more computing devices.

43. (Original) The interactive network of claim 42, wherein said indicia comprises a display of the live electronic presentation.

44. (Previously Presented) A viewing management method for managing viewing of multiple live electronic presentations, comprising:

monitoring viewing habits of one or more viewers of live electronic presentations to determine particular events within the electronic presentations that the viewers are likely to want to view, wherein at least some of said events pertain to some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations;

ascertaining from data that does not comprise content that can be presented to a viewer, whether said one or more viewers would likely want to view a particular event; and

notifying one or more viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view.

45. (Original) The viewing management method of claim 44, wherein said notifying comprises automatically displaying the event for a viewer.

46. (Original) The viewing management method of claim 44, wherein said notifying comprises automatically displaying indicia of the electronic presentation, but not the electronic presentation for a viewer.

47. (Original) The viewing management method of claim 44, wherein said notifying comprises automatically displaying the event in a picture-in-picture (PIP) window on a viewer device.

48. (Original) The viewing management method of claim 44, wherein said monitoring comprises establishing a correlation between the time that a viewer views a particular electronic presentation and the events that transpire during that time.

49. (Original) The viewing management method of claim 48, wherein said establishing comprises evaluating viewer habits over a plurality of time frames during which the viewer is viewing one or more electronic presentations.

50. (Original) One or more computers programmed with instructions which, when executed by the one or more computers, cause the one or more computers to perform the method of claim 44.

51. (Original) One or more computer-readable media having computer-readable instructions thereon which, when executed by a computer, implement the method of claim 44.

52. (Previously Presented) An interactive network comprising:
one or more client viewing devices; and
one or more computing devices communicatively linked with the one or more client viewing devices, the computing devices being programmed to:

monitor viewing habits of one or more viewers of live electronic presentations to determine particular events within the electronic presentations that the viewers are likely to want to view, wherein at least

some of said events pertain to some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations;

ascertain from data that does not comprise content that can be presented to a viewer, whether said one or more viewers would likely want to view a particular event; and

notify one or more viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view.

53. (Original) The interactive network of claim 52, wherein at least one of the client viewing devices comprises a television.

54. (Original) The interactive network of claim 52, wherein at least one of the client viewing devices comprises a computer display.

55. (Previously Presented) A user interface for use in an interactive entertainment system comprising:

a processor;

an application executing on the processor and configured to present plurality of fields, one of which displaying a number of titles of programs that can be selected by a viewer, another of which displaying indicia that can be selected to define viewer preferences for simultaneously monitoring two or more of the

programs that are selected by the viewer, wherein said monitoring comprises monitoring at least data that does not comprise content that can be presented to the viewer and which comprises events that can occur within said two or more programs, wherein at least some of said events describe some activity or action that can take place within the electronic presentation itself and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations; and

an input device operable to enable a user to select a particular electronic presentation for continuous play viewing.

56. (Original) The user interface of claim 55, wherein said indicia is associated with predefined aspects of the programs.

57. (Original) The user interface of claim 55, wherein said indicia is associated with viewer-definable aspects of the programs.

(9) Evidence appendix. None

(10) Related proceedings appendix. None